

World & Nation

Bishops again appeal for dismissal of abortion-rights case

By Jerry Filteau

Washington (NC) — Warning that the U.S. bishops could face "real injury" and "irreparable harm" from a court order requiring them to give extensive pro-life documents to their pro-abortion opponents, attorneys representing the bishops asked a federal appeals court in New York to rehear their appeal to dismiss the underlying case.

In a June 4 decision, a three-judge panel of the 2nd U.S. Circuit Court of Appeals had confirmed \$100,000-a-day fines for contempt of court against the National Conference of Catholic Bishops — U.S. Catholic Conference. Seeking a rehearing two weeks later, the NCCB-USCC attorneys said the majority opinion in the earlier decision had "announced a new rule" which granted an "unprecedented" expansion of powers to federal courts.

Arguing the "exceptional importance to courts" of the "novel" legal issues involved, the attorneys also suggested that the whole 13-judge circuit court should rehear it, rather than the three-judge panel which initially heard the arguments and decided 2-1 against

the NCCB-USCC.

The NCCB-USCC's chief argument was that the subpoenas were not valid because the plaintiffs do not have legal standing to bring suit in federal court, and therefore the court does not have the necessary jurisdiction to hear the case, much less to enforce subpoenas which depend on its jurisdiction in the case. Beyond this question is another crucial issue — whether a subpoenaed witness can test a court's jurisdiction in a lawsuit.

Even a short list of significant issues brought into play by the case includes questions about the separation of church and state, the jurisdiction of the federal courts, the discretionary powers of federal administrative agencies, and the government's power to restrict the political expression of religious organizations.

The far-reaching case dates back to 1980, when Abortion Rights Mobilization, or ARM, sued the Internal Revenue Service in an effort to force the revocation of tax-exempt status for the Catholic Church. Complex pretrial legal maneuvering has occupied the intervening seven years.

The June 4 appellate decision, reached by a 2-1 vote, is of special interest for two reasons — its impact on the ARM case itself and its potential impact on other claims of federal judicial power.

The decision's most immediate effect is to bring the underlying lawsuit a big step closer to trial. The bishops and the IRS have exhausted virtually all other avenues to bring about a dismissal without trial.

The broader result of the appellate decision is that it could open the courts to greater use by individuals or groups seeking to hinder churches or religious organizations from taking strong stands on public policy issues.

The history of the case is instructive in this regard. The first key to the case is that the NCCB and USCC — as organizational representatives of the U.S. Catholic Church — are not defendants in the case, although ultimately their tax-exempt status is at stake.

The defendant is the IRS, accused of failing to enforce provisions of the tax code, to the alleged detriment of ARM and the other plaintiffs. At one point the NCCB-USCC was added to the suit as a co-defendant, but that addition was dismissed for lack of cause.

As a non-party — neither plaintiff nor defendant — the NCCB-USCC participates in the case only as a witness.

If the appellate ruling is upheld, other such non-party witnesses may be held unable to

contest the jurisdiction of a federal court over the subject matter of a case even if that jurisdiction is contestable.

The non-party witnesses would then be able to challenge a subpoena only if the court has clearly usurped power in taking up the case or if the subpoena itself attacks the witnesses' "personal rights."

The writer of the majority opinion, U.S. Circuit Judge Jon Newman, based his decision in part on speculation that allowing witnesses to appeal cases could open the door to collusion between a defendant and a friendly witness called in specifically to launch such a challenge.

Newman did not speculate, however, on the possibility that a rejection of the NCCB-USCC appeal would open the door to mischief suits against religious bodies all over the country.

A footnote on the case: An ARM victory in the case would not force Catholic parishes, organizations and institutions across the United States to pay taxes. As the IRS lawyers noted in arguments on the appeal last year, Church agencies are exempt from taxes under the tax code's 501(c)3 category, but they could be reclassified as 501(c)4 tax-exempt entities if they wished to engage in political campaigns or extensive lobbying.

Thus contributors to the Church could no longer deduct their contributions on their income tax returns.

Catholic League writes legal brief backing Baby M's natural mother

Milwaukee (NC) — Arguing that surrogate parenting amounts to illegally trafficking in human lives, the Catholic League for Religious and Civil Rights has filed a friend-of-the-court brief with the New Jersey Supreme Court in support of Mary Beth Whitehead, the surrogate mother in the "Baby M" case.

Last March, Judge Harvey R. Sorkow of Superior Court in Hackensack, N.J., ruled that the surrogate contract between Whitehead and William and Elizabeth Stern was valid. Custody of the 1-year-old girl was awarded to her biological father, and the judge denied all visitation rights to the biological mother.

Whitehead was artificially inseminated with Stern's sperm, but she refused to give up the baby she previously had agreed to bear for \$10,000. She then sought custody of the child.

She has appealed the lower court's ruling to the New Jersey Supreme Court.

In its legal brief, which was released in early June, the Milwaukee-based league argued that New Jersey's high court should overturn the lower court's decision because

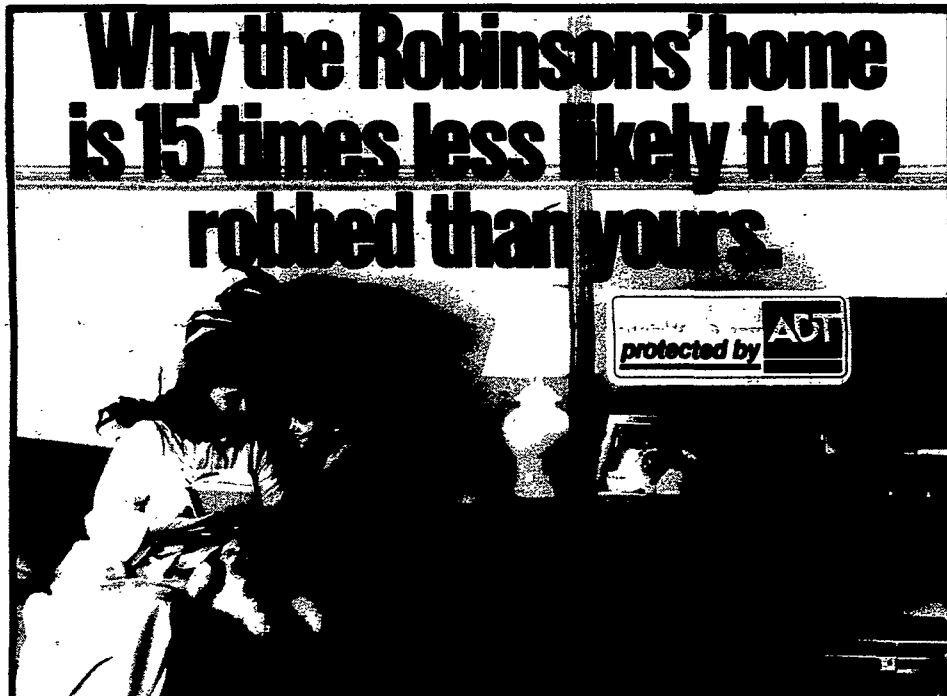
the surrogate parenting agreement, Mrs. Stern's adoption of the baby, and the termination of Whitehead's parental rights all violate New Jersey's existing adoption and child custody laws.

"If the surrogate parenting agreement is upheld," said league general counsel Steven F. McDowell, who wrote the brief, "individuals could bypass these laws (the state's adoption and child custody statutes) merely by contract. That means the state's laws would be rendered essentially meaningless."

He said nothing "in the concept of surrogacy would warrant treatment through any procedure other than New Jersey's child custody and adoption laws," both of which have strict requirements.

McDowell noted that New Jersey law says requirements for private-placement adoptions were enacted "to prevent the trafficking for profit in human lives," and he added that the decision for the Sterns appears to be a violation of these statutes.

The league's brief also argued that the surrogate parenting agreement unconstitutionally deprives Whitehead of her constitutionally protected right to the custody and "companionship of her child."



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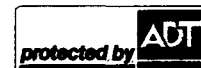
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